

### **REMARKS**

Claims 1-17, 20 and 21 are pending in the above-identified application. Support for new claims 20 and 21 is found at page 5, lines 14-15 of the present specification.

#### **Issues under 35 U.S.C. § 112**

Claims 1, 3-11, 13, 15-17 and 19 have been rejected under 35 U.S.C. § 112, first paragraph. The Office Action states that the reasons for this rejection include: (1) the failure of claim 1 to satisfy the enablement requirement because this claim does not recite any specific weight ratio for the compounds of formulas I and II (in contrast to claim 2 which recites these ratios); and (2) the failure of claims reciting application of the fungicidal compounds "separately or successively" to satisfy the enablement requirement. It appears that the last two sentences in this section at the top of page 3 of the Office Action were mistakenly included, perhaps from a draft of a different Office Action, since the formulas I and II are indeed correctly recited in the version of the patent claims submitted with the Supplemental Preliminary Amendment filed August 28, 2006.

Claims 6-9, 16 and 17 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because these claims recite that the fungicides are applied "separately, or in succession" which is asserted to be inconsistent with the recitation in claim 1 that the compounds of formulas I and II are in a "mixture".

Claims 18 and 19 have been rejected under 35 U.S.C. § 112, second paragraph, as well as 35 U.S.C. 101 as being improper "use" claims.

#### **Responses to Claim Rejections**

In response to issue (1) for the rejection under 35 U.S.C. § 112, first paragraph, it is respectfully submitted that the significant feature recited in claim 1 concerns the "synergistically" effective amount of the mixture of the compounds of formulas I and II. The

synergism of the compounds of formulas I and II may be obtainable outside the ratio ranges recited in present claim 2, such that the ratio ranges of claim 2 constitute preferred embodiments but not an essential feature of the present invention. It is therefore respectfully requested that the Patent Examiner acknowledge this so that claim 1, as well as claims depending thereon, may be placed into condition for allowance. Thus, it is requested that this basis for the above-noted rejection be withdrawn.

With regard to item (2) of the rejection under 35 U.S.C. § 112, first paragraph, it is submitted that all of the present claims satisfy the enablement requirement in that all claims require the formation of a "mixture" of the compounds of formulas I and II, whether the mixture is formed before application on to the targeted substrate, or whether the mixture is formed after application on the targeted substrate (e.g. the fungal habitat, seed, soil or plant upon which the compounds may be separately or successively applied). It appears to be the position of the Patent Examiner that application "separately, or in succession" may include situations in which an application of a first compound is separated by a time period long enough to allow for absorption into the application substrate so that the later application of the second compound does not in fact form a mixture with the first compound (which is already absorbed). However, the recitation in claim 1 that the compounds are in a "mixture" makes it clear that a mixture of the compounds must exist at some point, be it before or shortly after application onto the desired target substrate. In the end, it is essential that both of the active compounds exhibit their synergistic fungicidal activity together on the target substrate, whether these compounds are formulated together in a single formulation for application onto a field, or whether the compounds are formulated separately and applied onto a field one after another.

With regard to the rejection of claims 6-9, 16 and 17 under 35 USC 112, second paragraph, it is submitted that the above-noted reasons concerning item (2) stated immediately above also apply to this rejection. That is, a "mixture" must be formed of the compounds at some point in order for the compounds to exhibit their synergistic effect on the target substrate. Thus, it is requested that this rejection also be withdrawn.

Regarding the rejection of claims 18 and 19, these claims have been canceled so as to remove the basis for this rejection.

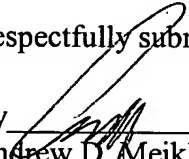
It is submitted for the reasons stated above that all of the presently pending claims recite patentable subject matter such that the present application should be placed into condition for allowance.

If the Examiner has any questions regarding the above matter please contact Applicants' representative, Andrew D. Meikle, in the Washington Metropolitan Area at the phone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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